



Reprinted
March 1, 2005

HOUSE BILL No. 1299

DIGEST OF HB 1299 (Updated February 28, 2005 11:35 pm - DI 92)

Citations Affected: IC 6-9; noncode.

Synopsis: Food and beverage taxes. Authorizes the following to adopt an ordinance to impose a food and beverage tax: (1) the town of Avon; (2) Wayne County and the cities and towns located in Wayne County; (3) Monroe County; (4) the county seats of counties containing municipalities that impose a food and beverage tax. Makes various changes to the administration and use of the Henry County food and beverage tax.

Effective: December 31, 2004 (retroactive); upon passage; July 1, 2005.

Whetstone, Saunders, Pflum, Welch

January 11, 2005, read first time and referred to Committee on Ways and Means.
February 24, 2005, amended, reported — Do Pass.
February 28, 2005, read second time, amended, ordered engrossed.

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HB 1299—LS 6357/DI 103+



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1299

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-9-25-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]: Sec. 1. (a)
3 This chapter applies to a county having a population of more than
4 forty-seven thousand (47,000) but less than fifty thousand (50,000).

5 (b) The county described in subsection (a) is unique because:

6 (1) governmental entities and nonprofit organizations in the
7 county have successfully undertaken cooperative efforts to
8 promote tourism and economic development; and

9 (2) several unique tourist attractions are located in the county,
10 including:

11 (A) the Indiana basketball hall of fame;

12 (B) the Wilbur Wright birthplace memorial; and

13 (C) a historic gymnasium.

14 (c) The presence of these unique attractions in the county has:

15 (1) increased the number of visitors to the county;

16 (2) generated increased sales at restaurants and other retail
17 establishments selling food in the county; and

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(3) placed increased demands on all local governments for services needed to support tourism and economic development in the county.

(d) The use of food and beverage tax revenues arising in part from the presence of the attractions identified in subsection (b)(2) to support tourism and economic development in the county permits governmental units in the county to diversify the revenue sources for which local government improvements and services are funded.

SECTION 2. IC 6-9-25-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:
Sec. 9.5. (a) This section applies to revenues from the county food and beverage tax received by the county after June 30, 1994.

(b) Money in the fund established under section 8 of this chapter shall be used by the county for the financing, construction, renovation, improvement, equipping, operation, or maintenance of the following capital ~~expenditures~~ **improvements**:

- (1) Sanitary sewers or wastewater treatment facilities that serve economic development purposes.
- (2) Drainage or flood control facilities that serve economic development purposes.
- (3) Road improvements used on an access road for an industrial park that serve economic development purposes.
- (4) A covered horse show arena.
- (5) A historic birthplace memorial.
- (6) A historic gymnasium and community center in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).
- (7) Main street renovation and picnic and park areas in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).
- (8) A community park and cultural center.
- (9) Projects for which the county decides after July 1, 1994, to:
 - (A) **expend money in the fund established under section 8 of this chapter; or**
 - (B) issue bonds or other obligations or enter into leases under section 11.5 of this chapter;
 after the projects described in subdivisions (1) through (8) have been funded.
- (10) An ambulance.

Money in the fund may not be used for the operating costs of any of the permissible projects listed in this section. In addition, the county may

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not ~~initiate a project~~ **issue bonds or enter into leases or other obligations** under this chapter after December 31, ~~2004~~ **2015**.

(c) The county capital improvements committee is established to make recommendations to the county fiscal body concerning the use of money in the fund established under section 8 of this chapter. The capital improvements committee consists of the following members:

(1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.

(2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same political party. One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400). One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand four hundred (2,400).

(3) Two (2) residents of the largest city in the county, appointed by the municipal executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the municipal fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(d) Except as provided in subsection (e), the term of a member appointed to the capital improvements committee under subsection (c) is four (4) years.

(e) The initial terms of office for the members appointed to the county capital improvements committee under subsection (c) are as follows:

(1) Of the members appointed under subsection (c)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (c)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (c)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

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(4) Of the members appointed under subsection (c)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(f) At the expiration of a term under subsection (e), the member whose term expired ~~shall~~ **may** be reappointed to the county capital improvements committee to fill the vacancy caused by the expiration.

(g) The capital improvements committee is abolished on January 1, ~~2005~~; **2016**.

SECTION 3. IC 6-9-25-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:

Sec. 10.5. (a) The county food and beverage tax council is established in the county. The membership of the county food and beverage tax council consists of the fiscal body of the county and the fiscal body of each municipality that lies either partly or entirely within the county.

(b) The county food and beverage tax council has a total of one hundred (100) votes. Every member of the county food and beverage tax council is allocated a percentage of the total one hundred (100) votes that may be cast. The percentage that a municipality in the county is allocated for a year equals the same percentage that the population of the municipality bears to the population of the county. The percentage that the county is allocated for a year equals the same percentage that the population of all areas of the county not located in a municipality bears to the population of the county. In the case of a municipality that lies partly within the county, the allocation shall be based on the population of that portion of the municipality that lies within the county.

(c) Before January 2 of each year, the county auditor shall certify to each member of the food and beverage tax council the number of votes, rounded to the nearest one-hundredth (0.01), the member has for that year.

(d) The food and beverage tax imposed under this chapter remains in effect until the county food and beverage tax council adopts an ordinance to rescind the tax.

(e) An ordinance to rescind the food and beverage tax takes effect December 31 of the year in which the ordinance is adopted.

(f) The county food and beverage tax council may not rescind the food and beverage tax if there are bonds outstanding or leases or other obligations payable under this chapter.

(g) The county food and beverage tax council is abolished on January 1, ~~2005~~; **2016**.

SECTION 4. IC 6-9-25-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:

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Sec. 11.5. (a) Until January 1, ~~2005~~, **2016**, the county may:

(1) use money in the fund established under section 8 of this chapter to pay all or part of the costs associated with the facilities described in section 9.5 of this chapter;

(2) issue bonds, enter into leases, or incur other obligations to ~~(1)~~ pay any costs associated with the facilities described in section 9.5 of this chapter;

~~(2)~~ (3) reimburse the county or any nonprofit corporation for any money advanced to pay those costs; or

~~(3)~~ (4) refund bonds issued or other obligations incurred under this chapter.

(b) Bonds or other obligations issued under this section:

(1) are payable ~~solely~~ from money provided in this chapter, any other revenues available to the county, or any combination of these sources, in accordance with a pledge made under IC 5-1-14-4;

(2) must be issued in the manner prescribed by IC 36-2-6-18 through IC 36-2-6-20; and

(3) may, in the discretion of the county, be sold at a negotiated sale at a price to be determined by the county or in accordance with IC 5-1-11 and IC 5-3-1.

(c) Leases entered into under this section:

(1) may be for a term not to exceed fifty (50) years;

(2) may provide for payments from revenues under this chapter, any other revenues available to the county, or any combination of these sources;

(3) may provide that payments by the county to the lessor are required only to the extent and only for the time that the lessor is able to provide the leased facilities in accordance with the lease;

(4) must be based upon the value of the facilities leased; and

(5) may not create a debt of the county for purposes of the Constitution of the State of Indiana.

(d) A lease may be entered into by the county executive only after a public hearing at which all interested parties are provided the opportunity to be heard. After the public hearing, the executive may approve the execution of the lease on behalf of the county only if the executive finds that the service to be provided throughout the life of the lease will serve the public purpose of the county and is in the best interests of its residents. A lease approved by the executive must also be approved by an ordinance of the county fiscal body.

(e) Upon execution of a lease under this section, and after approval of the lease by the county fiscal body, the county executive shall

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publish notice of the execution of the lease and the approval of the lease in accordance with IC 5-3-1.

(f) An action to contest the validity of bonds issued or leases entered into under this section must be brought within thirty (30) days after the adoption of a bond ordinance or notice of the execution and approval of the lease, as the case may be.

SECTION 5. IC 6-9-27-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter applies to the following:

(1) A town:

(A) located in a county having a population of more than sixty-five thousand (65,000) but less than seventy thousand (70,000); and

(B) having a population of more than nine thousand (9,000).

(2) A town:

(A) located in a county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950); and

(B) having a population of less than one thousand (1,000).

(3) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than fifteen thousand (15,000).

(4) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than ten thousand (10,000) but less than fifteen thousand (15,000).

(5) A town:

(A) located in a county having a population of more than one hundred thousand (100,000) but less than one hundred five thousand (105,000); and

(B) having a population of more than five thousand (5,000) but less than six thousand three hundred (6,300).

SECTION 6. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 35. Food and Beverage Taxes in Wayne County

Sec. 1. This chapter applies to a county having a population of

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1 more than seventy-one thousand (71,000) but less than seventy-one
2 thousand four hundred (71,400).

3 Sec. 2. Except as otherwise provided in this chapter, the
4 definitions in IC 36-1-2 apply throughout this chapter.

5 Sec. 3. As used in this chapter, "beverage" includes an alcoholic
6 beverage.

7 Sec. 4. As used in this chapter, "bonds" has the meaning set
8 forth in IC 5-1-11-1.

9 Sec. 5. As used in this chapter, "department" means the
10 department of state revenue.

11 Sec. 6. As used in this chapter, "economic development project"
12 has the meaning set forth in IC 6-3.5-7-13.1.

13 Sec. 7. As used in this chapter, "food" includes any food
14 product.

15 Sec. 8. As used in this chapter, "gross retail income" has the
16 meaning set forth in IC 6-2.5-1-5.

17 Sec. 9. As used in this chapter, "obligations" has the meaning set
18 forth in IC 5-1-3-1(b).

19 Sec. 10. As used in this chapter, "person" has the meaning set
20 forth in IC 6-2.5-1-3.

21 Sec. 11. As used in this chapter, "retail merchant" has the
22 meaning set forth in IC 6-2.5-1-8.

23 Sec. 12. As used in this chapter, "unit" means:

24 (1) a county described in section 1 of this chapter; or

25 (2) a city or town located in the county described in section 1
26 of this chapter.

27 Sec. 13. (a) After January 1 but before August 1, the fiscal body
28 of a unit may adopt an ordinance to impose an excise tax known as
29 the unit's food and beverage tax on transactions described in
30 section 14 of this chapter. The fiscal body of a unit other than a
31 county may not adopt an ordinance under this chapter until after
32 July 31, 2006, unless the fiscal body of the county adopts a
33 resolution to relinquish its exclusive authority to adopt an
34 ordinance under this chapter before August 1, 2006. If a county
35 fiscal body adopts a resolution under this subsection, the county
36 fiscal body shall send a certified copy of the resolution to the
37 executive of each city and town located in the county.

38 (b) Before a fiscal body may adopt an ordinance imposing a food
39 and beverage tax, the fiscal body must hold a public hearing on the
40 proposed ordinance, with notice of the time, date, and place of the
41 public hearing given in accordance with IC 5-3-1.

42 (c) If the fiscal body of a county adopts an ordinance to impose

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a food and beverage tax under this chapter, the county executive must also adopt a substantially similar ordinance to impose the tax.

(d) If an ordinance is adopted under subsection (c), the county executive shall immediately send a certified copy of the ordinance to the department.

(e) If a unit other than a county adopts an ordinance under this section, the unit's executive shall immediately send a certified copy of the ordinance to the department.

Sec. 14. (a) Except as provided in subsection (c), a food and beverage tax imposed under section 13 of this chapter applies to any transaction in which food or a beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the unit in which the tax is imposed; and
- (3) by the retail merchant for consideration.

If both a county and another unit located in the county impose a tax under this chapter, the tax imposed by the county does not apply within the territory of the other unit imposing the tax.

(b) Transactions described in subsection (a)(1) include transactions in which food or a beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverages sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.

(c) A food and beverage tax imposed under this chapter does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed under IC 6-2.5.

Sec. 15. The food and beverage tax imposed on a food or beverage transaction described in section 14 of this chapter may not exceed one percent (1%) of the gross retail income received by the retail merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 16. If the food and beverage tax imposed in a unit is imposed at a rate lower than the rate permitted under section 15 of this chapter, the unit's fiscal body may adopt an ordinance to

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1 increase the unit's food and beverage tax rate. The ordinance must
 2 be adopted after January 1 but before September 1 of a year. The
 3 fiscal body shall send a certified copy of the ordinance increasing
 4 the food and beverage tax rate to the department.

5 Sec. 17. (a) If no bonds, leases, obligations, or other evidences of
 6 indebtedness of a unit that are payable from a food and beverage
 7 tax imposed under this chapter are outstanding, the unit's fiscal
 8 body may adopt an ordinance to:

9 (1) reduce the unit's food and beverage tax rate; or

10 (2) repeal the unit's food and beverage tax.

11 (b) An ordinance described in subsection (a) must be adopted
 12 after January 1 but before September 1 of a year. The fiscal body
 13 shall send a certified copy of the ordinance adopted under this
 14 section to the department.

15 Sec. 18. If a fiscal body adopts an ordinance under this chapter,
 16 the ordinance takes effect January 1 of the year following the year
 17 in which the ordinance is adopted.

18 Sec. 19. A food and beverage tax imposed this chapter shall be
 19 imposed, paid, and collected in the same manner that the state
 20 gross retail tax is imposed, paid, and collected under IC 6-2.5.
 21 However, the return that is filed for the payment of the tax may be
 22 made on a separate return or may be combined with the return
 23 filed for the payment of the state gross retail tax as prescribed by
 24 the department.

25 Sec. 20. (a) The department shall notify the county auditor of a
 26 county containing a unit that imposes a food and beverage tax
 27 under this chapter of the amount of tax paid in the unit.

28 (b) The amounts received from a food and beverage tax imposed
 29 under this chapter shall be paid monthly by the treasurer of state
 30 on warrants issued by the auditor of state to the county auditor of
 31 the county in which the unit that imposed the tax is located.

32 Sec. 21. A county auditor shall establish for each unit in the
 33 county that imposes a tax under this chapter a local food and
 34 beverage tax revenue fund into which all amounts received
 35 monthly from the treasurer of state under this chapter shall be
 36 deposited.

37 Sec. 22. Revenue derived from a tax imposed under this chapter
 38 may be treated by a unit as additional revenue for the purpose of
 39 fixing its budget for the budget year during which the revenues are
 40 to be distributed to the unit.

41 Sec. 23. A unit may use revenues from a tax imposed under this
 42 chapter for one (1) or more of the following purposes:

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(1) To promote and encourage conventions, visitors, and tourism within the unit.

(2) To promote and encourage economic development within the unit.

(3) Paying debt service or lease rentals on:

(A) bonds;

(B) leases;

(C) obligations; or

(D) any other evidence of indebtedness of the unit; for a project described in subdivisions (1) and (2).

Sec. 24. The department of local government finance may not reduce a unit's property tax levy by the amount of revenue received from a tax imposed under this chapter.

Sec. 25. (a) The food and beverage tax revenue committee is established to make recommendations concerning the use of money in the funds established under section 21 of this chapter. The committee consists of the following members:

(1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.

(2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same political party.

(3) Two (2) residents of the largest city in the county, appointed by the city executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the city fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(b) Except as provided in subsection (c), the term of a member appointed to the food and beverage tax revenue committee under this section is four (4) years.

(c) The initial terms of office for the members appointed to the food and beverage tax revenue committee under subsection (a) are as follows:

(1) Of the members appointed under subsection (a)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

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(2) Of the members appointed under subsection (a)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (a)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (a)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(d) At the expiration of a term under subsection (c), the member whose term expired shall be reappointed to the food and beverage tax revenue committee to fill the vacancy caused by the expiration.

(e) The food and beverage tax revenue committee is abolished on the date that the county fiscal body adopts a resolution abolishing the food and beverage tax revenue committee. A county fiscal body may adopt a resolution under this subsection if the county fiscal body determines that each unit in the county that had imposed a tax under this chapter has adopted an ordinance to rescind the tax.

Sec. 26. The general assembly covenants with each unit subject to this chapter and the purchasers and owners of bonds, leases, obligations, or any other evidences of indebtedness of the county payable from a tax imposed under this chapter that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of a tax imposed under this chapter so long as the principal, interest, or lease rentals due under those bonds, leases, obligations, or other evidences of indebtedness of a unit that are payable from a tax imposed under this chapter remain unpaid.

SECTION 7. IC 6-9-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 36. Monroe County Food and Beverage Tax

Sec. 1. This chapter applies to Monroe County.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.

(b) If the fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

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1 (c) If the fiscal body adopts an ordinance under subsection (a),
 2 the county food and beverage tax applies to transactions that occur
 3 after the last day of the month that succeeds the month in which
 4 the ordinance is adopted.

5 (d) If the fiscal body adopts an ordinance under subsection (a),
 6 it may adopt an ordinance to allow every retail merchant to deduct
 7 and retain from the amount of those taxes otherwise required to be
 8 remitted under this chapter, if timely remitted, a retail merchant's
 9 collection allowance. The fiscal body shall state the amount of the
 10 allowance in the ordinance. An allowance authorized under this
 11 subsection is in addition to any allowance authorized under an
 12 ordinance adopted under section 6 or 7 of this chapter.

13 (e) The fiscal body may not adopt an ordinance under
 14 subsection (a) before January 1, 2006.

15 Sec. 4. (a) Except as provided in subsection (c), a tax imposed
 16 under section 3 of this chapter applies to any transaction in which
 17 food or beverage is furnished, prepared, or served:

- 18 (1) for consumption at a location, or on equipment, provided
- 19 by a retail merchant;
- 20 (2) in the county in which the tax is imposed; and
- 21 (3) by a retail merchant for consideration.

22 (b) Transactions described in subsection (a)(1) include
 23 transactions in which food or beverage is:

- 24 (1) served by a retail merchant off the merchant's premises;
- 25 (2) food sold in a heated state or heated by a retail merchant;
- 26 (3) two (2) or more food ingredients mixed or combined by a
- 27 retail merchant for sale as a single item (other than food that
- 28 is only cut, repackaged, or pasteurized by the seller, and eggs,
- 29 fish, meat, poultry, and foods containing these raw animal
- 30 foods requiring cooking by the consumer as recommended by
- 31 the federal Food and Drug Administration in chapter 3,
- 32 subpart 3-401.11 of its Food Code so as to prevent food borne
- 33 illnesses); or
- 34 (4) food sold with eating utensils provided by a retail
- 35 merchant, including plates, knives, forks, spoons, glasses,
- 36 cups, napkins, or straws (for purposes of this subdivision, a
- 37 plate does not include a container or packaging used to
- 38 transport the food).

39 (c) The county food and beverage tax does not apply to the
 40 furnishing, preparing, or serving of any food or beverage in a
 41 transaction that is exempt, or to the extent exempt, from the state
 42 gross retail tax imposed by IC 6-2.5.

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1 **Sec. 5. The county food and beverage tax imposed on a food or**
 2 **beverage transaction described in section 4 of this chapter equals**
 3 **one percent (1%) of the gross retail income received by the**
 4 **merchant from the transaction. For purposes of this chapter, the**
 5 **gross retail income received by the retail merchant from such a**
 6 **transaction does not include the amount of tax imposed on the**
 7 **transaction under IC 6-2.5.**

8 **Sec. 6. If an ordinance is not adopted under section 7 of this**
 9 **chapter, the tax that may be imposed under this chapter shall be**
 10 **imposed, paid, and collected in the same manner that the state**
 11 **gross retail tax is imposed, paid, and collected under IC 6-2.5.**
 12 **However, the return to be filed for the payment of the tax under**
 13 **this chapter may be made separately or may be combined with the**
 14 **return filed for the payment of the state gross retail tax, as**
 15 **prescribed by the department of state revenue.**

16 **Sec. 7. (a) The county fiscal body may adopt an ordinance to**
 17 **require that the tax be reported on forms approved by the county**
 18 **treasurer and that the tax shall be paid monthly to the county**
 19 **treasurer. If such an ordinance is adopted, the tax shall be paid to**
 20 **the county treasurer not more than twenty (20) days after the end**
 21 **of the month the tax is collected. If such an ordinance is not**
 22 **adopted, the tax shall be imposed, paid, and collected in exactly the**
 23 **same manner as the state gross retail tax is imposed, paid, and**
 24 **collected pursuant to IC 6-2.5.**

25 **(b) If an ordinance is adopted under this section, all of the**
 26 **provisions of IC 6-2.5 relating to rights, duties, liabilities,**
 27 **procedures, penalties, definitions, exemptions, and administration**
 28 **apply to the imposition and administration of the tax imposed**
 29 **under section 3 of this chapter, except to the extent those**
 30 **provisions are in conflict or inconsistent with the specific**
 31 **provisions of this chapter or the requirements of the county**
 32 **treasurer. Specifically and not in limitation of this subsection, the**
 33 **terms "person" and "gross income" shall have the same meaning**
 34 **in this section as set forth in IC 6-2.5, except that "person" shall**
 35 **not include state supported educational institutions. If the tax is**
 36 **paid to the department of state revenue, the returns to be filed for**
 37 **the payment of the tax under this section may be either a separate**
 38 **return or may be combined with the return filed for the payment**
 39 **of the state gross retail tax as the department of state revenue may**
 40 **by rule determine.**

41 **Sec. 8. If an ordinance is not adopted under section 9 of this**
 42 **chapter, the amounts received from the county food and beverage**

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1 tax imposed under this chapter shall be paid monthly by the
2 treasurer of state to the county treasurer upon warrants issued by
3 the auditor of state.

4 Sec. 9. (a) If an ordinance is adopted under section 3 of this
5 chapter, the county treasurer shall establish a food and beverage
6 tax receipts fund.

7 (b) The county treasurer shall deposit in the fund county food
8 and beverage tax revenue that the county treasurer receives.

9 (c) Any money earned from the investment of money in the fund
10 becomes part of the fund.

11 (d) Money in the fund at the end of the county fiscal year does
12 not revert to the county general fund.

13 Sec. 10. (a) If an ordinance is adopted under section 3 of this
14 chapter, the fiscal officer of the city of Bloomington shall establish
15 a food and beverage tax receipts fund.

16 (b) The fiscal officer shall deposit in the fund county food and
17 beverage tax revenue that the fiscal officer receives.

18 (c) Any money earned from the investment of money in the fund
19 becomes part of the fund.

20 (d) Money in the fund at the end of the city fiscal year does not
21 revert to the city general fund.

22 Sec. 11. (a) Each month, the auditor of Monroe County shall
23 distribute the county food and beverage tax revenue received by
24 the county treasurer between the city of Bloomington and Monroe
25 County in the same ratio that the population of the city of
26 Bloomington bears to the population of Monroe County.

27 (b) Distribution of county food and beverage tax revenue to the
28 city of Bloomington must be on warrants issued by the auditor of
29 Monroe County.

30 Sec. 12. Monroe County's share of county food and beverage tax
31 revenue deposited in the county food and beverage tax receipts
32 fund may be used to only finance, construct, operate, and maintain
33 one (1) or more of the following:

- 34 (1) A convention center, conference center, or auditorium
35 facility.
- 36 (2) Public safety facilities or operations.
- 37 (3) Parks and recreation facilities.
- 38 (4) Tourism or economic development projects.
- 39 (5) Parking facilities.

40 Sec. 13. Money deposited in the city food and beverage tax
41 receipts fund may be used only to finance, construct, operate, and
42 maintain one (1) or more of the following:

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(1) A convention center, conference center, or auditorium facility.

(2) Parks and recreation facilities.

(3) Tourism or economic development projects.

(4) Parking facilities.

(5) Public safety facilities or operations.

Sec. 14. (a) There is created a nine (9) member food and beverage tax authority to make recommendations to the county executive and the city executive concerning the use of money in the funds established under sections 9 and 10 of this chapter. The nine (9) members are appointed as follows:

(1) Two (2) members appointed by the executive of the largest municipality in the county. Not more than one (1) member appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(2) Two (2) members appointed by the city council of the largest municipality in the county. Not more than one (1) member appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(3) Three (3) members appointed by the county executive body. Not more than two (2) members appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(4) Two (2) members appointed by the county fiscal body. One (1) member appointed under this subdivision must be a resident of Ellettsville.

A member appointed under this subsection must reside in Monroe County.

(b) The term of appointment on the authority is two (2) years. However, when the initial appointments are made, each appointing authority shall appoint one (1) member for a one (1) year term and the remaining members for two (2) year terms. Subsequent appointments are for two (2) year terms. A vacancy on the authority shall be filled for the unexpired term by the authority that made the prior appointment.

(c) The affirmative vote of at least five (5) members of the authority is required for the authority to take an action.

Sec. 15. (a) If no obligations are outstanding, the county fiscal

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body may repeal the ordinance adopted under section 3 of this chapter imposing the tax before December 1 in any year.

(b) An ordinance to rescind the food and beverage tax takes effect January 1 of the year immediately following the year in which the ordinance is adopted.

(c) If the county fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

SECTION 8. IC 6-9-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 37. County Seat Food and Beverage Tax

Sec. 1. This chapter applies to a city that is the county seat of a county in which is located another city or a town that imposes a food and beverage tax under this article.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of a city may adopt an ordinance to impose an excise tax, known as the city food and beverage tax, on transactions described in section 4 of this chapter.

(b) If the fiscal body adopts an ordinance under subsection (a), the fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

(c) If the fiscal body adopts an ordinance under subsection (a), the city food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;
- (2) in the city in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant that ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.

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(c) The city food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. A city food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. A tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed with the payment of the tax imposed under this chapter may be made on a separate return or may be combined with the return filed for payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. The treasurer of state shall pay monthly the amounts received from the tax imposed under this chapter to the city fiscal officer upon warrants issued by the auditor of state.

Sec. 8. (a) If a tax is imposed under section 3 of this chapter, the city fiscal officer shall establish a food and beverage tax receipts fund.

(b) The city fiscal officer shall deposit in this fund all amounts received under this chapter.

(c) Money earned from the investment of money in the fund becomes a part of the fund.

Sec. 9. (a) A city shall use money in the fund established under section 8 of this chapter for only the following:

- (1) Renovating the city hall.
- (2) Constructing new police or fire stations, or both.
- (3) Improving the city's sanitary sewers or wastewater treatment facilities, or both.
- (4) Improving the city's storm water drainage systems.
- (5) Other projects involving the city's water system or protecting the city's well fields, as determined by the city fiscal body.

Money in the fund may not be used for the operating costs of a project. In addition, the city may not initiate a project under this chapter after December 31, 2010.

(b) The fiscal body of the city may pledge money in the fund to

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1 pay bonds issued, loans obtained, and lease payments or other
 2 obligations incurred by or on behalf of the city or a special taxing
 3 district in the city to provide the projects described in subsection
 4 (a).

5 (c) Subsection (b) applies only to bonds, loans, lease payments,
 6 or obligations that are issued, obtained, or incurred after the date
 7 on which the tax is imposed under section 3 of this chapter.

8 (d) A pledge under subsection (b) is enforceable under
 9 IC 5-1-14-4.

10 Sec. 10. With respect to obligations for which a pledge has been
 11 made under section 9(b) of this chapter, the general assembly
 12 covenants with the holders of the obligations that this chapter will
 13 not be repealed or amended in a manner that will adversely affect
 14 the imposition or collection of the tax imposed under this chapter
 15 if the payment of any of the obligations is outstanding.

16 SECTION 9. [EFFECTIVE UPON PASSAGE] A large percentage
 17 of the land in the city of Bloomington and in Monroe County is not
 18 taxable because it is owned by the state or the federal government,
 19 which puts the city and the county at a disadvantage in their ability
 20 to fund projects. These special circumstances require legislation
 21 particular to the city and county.

22 SECTION 10. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1299, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-9-25-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:
Sec. 1. (a) This chapter applies to a county having a population of more than forty-seven thousand (47,000) but less than fifty thousand (50,000).

(b) The county described in subsection (a) is unique because:

- (1) governmental entities and nonprofit organizations in the county have successfully undertaken cooperative efforts to promote tourism and economic development; and
- (2) several unique tourist attractions are located in the county, including:

- (A) the Indiana basketball hall of fame;
- (B) the Wilbur Wright birthplace memorial; and
- (C) a historic gymnasium.

(c) The presence of these unique attractions in the county has:

- (1) increased the number of visitors to the county;
- (2) generated increased sales at restaurants and other retail establishments selling food in the county; and
- (3) placed increased demands on all local governments for services needed to support tourism and economic development in the county.

(d) The use of food and beverage tax revenues arising in part from the presence of the attractions identified in subsection (b)(2) to support tourism and economic development in the county permits governmental units in the county to diversify the revenue sources for which local government improvements and services are funded.

SECTION 2. IC 6-9-25-9.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:
Sec. 9.5. (a) This section applies to revenues from the county food and beverage tax received by the county after June 30, 1994.

(b) Money in the fund established under section 8 of this chapter shall be used by the county for the financing, construction, renovation, improvement, equipping, operation, or maintenance of the following capital ~~expenditures~~ **improvements**:

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- (1) Sanitary sewers or wastewater treatment facilities that serve economic development purposes.
- (2) Drainage or flood control facilities that serve economic development purposes.
- (3) Road improvements used on an access road for an industrial park that serve economic development purposes.
- (4) A covered horse show arena.
- (5) A historic birthplace memorial.
- (6) A historic gymnasium and community center in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).
- (7) Main street renovation and picnic and park areas in a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400).
- (8) A community park and cultural center.
- (9) Projects for which the county decides after July 1, 1994, to:
 - (A) **expend money in the fund established under section 8 of this chapter; or**
 - (B) issue bonds or other obligations or enter into leases under section 11.5 of this chapter;
 after the projects described in subdivisions (1) through (8) have been funded.
- (10) An ambulance.

Money in the fund may not be used for the operating costs of any of the permissible projects listed in this section. In addition, the county may not ~~initiate a project~~ **issue bonds or enter into leases or other obligations** under this chapter after December 31, ~~2004~~ **2015**.

(c) The county capital improvements committee is established to make recommendations to the county fiscal body concerning the use of money in the fund established under section 8 of this chapter. The capital improvements committee consists of the following members:

- (1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.
- (2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same political party. One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand (2,000) but less than two thousand four hundred (2,400). One (1) appointee under this subdivision must be a resident of a town in the county with a population greater than two thousand

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four hundred (2,400).

(3) Two (2) residents of the largest city in the county, appointed by the municipal executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the municipal fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(d) Except as provided in subsection (e), the term of a member appointed to the capital improvements committee under subsection (c) is four (4) years.

(e) The initial terms of office for the members appointed to the county capital improvements committee under subsection (c) are as follows:

(1) Of the members appointed under subsection (c)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (c)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (c)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (c)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(f) At the expiration of a term under subsection (e), the member whose term expired ~~shall~~ **may** be reappointed to the county capital improvements committee to fill the vacancy caused by the expiration.

(g) The capital improvements committee is abolished on January 1, ~~2005~~ **2016**.

SECTION 3. IC 6-9-25-10.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:

Sec. 10.5. (a) The county food and beverage tax council is established in the county. The membership of the county food and beverage tax council consists of the fiscal body of the county and the fiscal body of each municipality that lies either partly or entirely within the county.

(b) The county food and beverage tax council has a total of one hundred (100) votes. Every member of the county food and beverage tax council is allocated a percentage of the total one hundred (100)

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votes that may be cast. The percentage that a municipality in the county is allocated for a year equals the same percentage that the population of the municipality bears to the population of the county. The percentage that the county is allocated for a year equals the same percentage that the population of all areas of the county not located in a municipality bears to the population of the county. In the case of a municipality that lies partly within the county, the allocation shall be based on the population of that portion of the municipality that lies within the county.

(c) Before January 2 of each year, the county auditor shall certify to each member of the food and beverage tax council the number of votes, rounded to the nearest one-hundredth (0.01), the member has for that year.

(d) The food and beverage tax imposed under this chapter remains in effect until the county food and beverage tax council adopts an ordinance to rescind the tax.

(e) An ordinance to rescind the food and beverage tax takes effect December 31 of the year in which the ordinance is adopted.

(f) The county food and beverage tax council may not rescind the food and beverage tax if there are bonds outstanding or leases or other obligations payable under this chapter.

(g) The county food and beverage tax council is abolished on January 1, ~~2005~~; **2016**.

SECTION 4. IC 6-9-25-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2004 (RETROACTIVE)]:

Sec. 11.5. (a) Until January 1, ~~2005~~; **2016**, the county may:

(1) use money in the fund established under section 8 of this chapter to pay all or part of the costs associated with the facilities described in section 9.5 of this chapter;

(2) issue bonds, enter into leases, or incur other obligations to ~~(1)~~ pay any costs associated with the facilities described in section 9.5 of this chapter;

~~(2)~~ (3) reimburse the county or any nonprofit corporation for any money advanced to pay those costs; or

~~(3)~~ (4) refund bonds issued or other obligations incurred under this chapter.

(b) Bonds or other obligations issued under this section:

(1) are payable ~~solely~~ from money provided in this chapter, any other revenues available to the county, or any combination of these sources, in accordance with a pledge made under IC 5-1-14-4;

(2) must be issued in the manner prescribed by IC 36-2-6-18

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through IC 36-2-6-20; and

(3) may, in the discretion of the county, be sold at a negotiated sale at a price to be determined by the county or in accordance with IC 5-1-11 and IC 5-3-1.

(c) Leases entered into under this section:

(1) may be for a term not to exceed fifty (50) years;

(2) may provide for payments from revenues under this chapter, any other revenues available to the county, or any combination of these sources;

(3) may provide that payments by the county to the lessor are required only to the extent and only for the time that the lessor is able to provide the leased facilities in accordance with the lease;

(4) must be based upon the value of the facilities leased; and

(5) may not create a debt of the county for purposes of the Constitution of the State of Indiana.

(d) A lease may be entered into by the county executive only after a public hearing at which all interested parties are provided the opportunity to be heard. After the public hearing, the executive may approve the execution of the lease on behalf of the county only if the executive finds that the service to be provided throughout the life of the lease will serve the public purpose of the county and is in the best interests of its residents. A lease approved by the executive must also be approved by an ordinance of the county fiscal body.

(e) Upon execution of a lease under this section, and after approval of the lease by the county fiscal body, the county executive shall publish notice of the execution of the lease and the approval of the lease in accordance with IC 5-3-1.

(f) An action to contest the validity of bonds issued or leases entered into under this section must be brought within thirty (30) days after the adoption of a bond ordinance or notice of the execution and approval of the lease, as the case may be."

Page 2, after line 14, begin a new paragraph and insert:

"SECTION 6. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 35. Wayne County Food and Beverage Tax

Sec. 1. This chapter applies to a county having a population of more than seventy-one thousand (71,000) but less than seventy-one thousand four hundred (71,400).

Sec. 2. Except as otherwise provided in this chapter, the definitions in IC 36-1-2 apply throughout this chapter.

Sec. 3. As used in this chapter, "beverage" includes an alcoholic

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beverage.

Sec. 4. As used in this chapter, "bonds" has the meaning set forth in IC 5-1-11-1.

Sec. 5. As used in this chapter, "department" means the department of state revenue.

Sec. 6. As used in this chapter, "economic development project" has the meaning set forth in IC 6-3.5-7-13.1.

Sec. 7. As used in this chapter, "food" includes any food product.

Sec. 8. As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5.

Sec. 9. As used in this chapter, "obligations" has the meaning set forth in IC 5-1-3-1(b).

Sec. 10. As used in this chapter, "person" has the meaning set forth in IC 6-2.5-1-3.

Sec. 11. As used in this chapter, "retail merchant" has the meaning set forth in IC 6-2.5-1-8.

Sec. 12. (a) After January 1 but before August 1, the fiscal body of a county may adopt an ordinance to impose an excise tax known as the county's food and beverage tax on transactions described in section 13 of this chapter.

(b) Before a fiscal body may adopt an ordinance imposing a food and beverage tax, the fiscal body must hold a public hearing on the proposed ordinance, with notice of the time, date, and place of the public hearing given in accordance with IC 5-3-1.

(c) This subsection does not apply to a county governed under IC 36-2-3.5. If the fiscal body adopts an ordinance to impose a food and beverage tax under this chapter, the county executive must also adopt a substantially similar ordinance to impose the tax.

(d) This subsection applies to a county governed under IC 36-2-3.5. If the fiscal body adopts an ordinance to impose a food and beverage tax under this chapter, the county executive must approve the ordinance in the manner prescribed by IC 36-2-4-8 to impose the tax.

(e) If an ordinance is adopted under subsection (c) or approved under subsection (d), the county executive shall immediately send a certified copy of the ordinance to the department.

Sec. 13. (a) Except as provided in subsection (c), a food and beverage tax imposed under section 12 of this chapter applies to any transaction in which food or a beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided

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by a retail merchant;

(2) in the county in which the tax is imposed; and

(3) by the retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or a beverage is:

(1) served by a retail merchant off the merchant's premises;

(2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverages sold on a "take out" or "to go" basis; or

(3) sold by a street vendor.

(c) A food and beverage tax imposed under this chapter does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed under IC 6-2.5.

Sec. 14. The food and beverage tax imposed on a food or beverage transaction described in section 13 of this chapter may not exceed one percent (1%) of the gross retail income received by the retail merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 15. If the food and beverage tax imposed in a county is imposed at a rate lower than the rate permitted under section 14 of this chapter, the county fiscal body may adopt an ordinance to increase the county's food and beverage tax rate. The ordinance must be adopted after January 1 but before September 1 of a year. The fiscal body shall send a certified copy of the ordinance increasing the food and beverage tax rate to the department.

Sec. 16. (a) If no bonds, leases, obligations, or other evidences of indebtedness of a county that are payable from a food and beverage tax imposed under this chapter are outstanding, the county fiscal body may adopt an ordinance to:

(1) reduce the county's food and beverage tax rate; or

(2) repeal the county's food and beverage tax.

(b) An ordinance described in subsection (a) must be adopted after January 1 but before September 1 of a year. The fiscal body shall send a certified copy of the ordinance adopted under this section to the department.

Sec. 17. If a county fiscal body adopts an ordinance under this chapter, the ordinance takes effect January 1 of the year following

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the year in which the ordinance is adopted.

Sec. 18. A food and beverage tax imposed this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return that is filed for the payment of the tax may be made on a separate return or may be combined with the return filed for the payment of the state gross retail tax as prescribed by the department.

Sec. 19. (a) The department shall notify the county auditor of a county that imposes a food and beverage tax under this chapter of the amount of tax paid in the county.

(b) The amounts received from a food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state on warrants issued by the auditor of state to the county auditor of the county that imposed the tax.

Sec. 20. A county auditor shall establish a local food and beverage tax revenue fund into which all amounts received monthly from the treasurer of state under this chapter shall be deposited.

Sec. 21. Revenue derived from a tax imposed under this chapter may be treated by a county as additional revenue for the purpose of fixing its budget for the budget year during which the revenues are to be distributed to the county.

Sec. 22. A county may use revenues from a tax imposed under this chapter for one (1) or more of the following purposes:

- (1)** To promote and encourage conventions, visitors, and tourism within the county.
- (2)** To promote and encourage economic development within the county.
- (3)** Paying debt service or lease rentals on:
 - (A)** bonds;
 - (B)** leases;
 - (C)** obligations; or
 - (D)** any other evidence of indebtedness of the county;
 for a project described in subdivisions (1) and (2).

Sec. 23. The department of local government finance may not reduce a county's property tax levy by the amount of revenue received from a tax imposed under this chapter.

Sec. 24. (a) The county food and beverage tax revenue committee is established to make recommendations to the county fiscal body concerning the use of money in the fund established under section 20 of this chapter. The committee consists of the

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following members:

(1) One (1) resident of the county representing each of the three (3) commissioner districts, appointed by the county executive. Not more than two (2) of the members appointed under this subdivision may be from the same political party.

(2) Two (2) residents of the county, appointed by the county fiscal body. The two (2) appointees may not be from the same political party.

(3) Two (2) residents of the largest city in the county, appointed by the city executive. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in economic development.

(4) Two (2) residents of the largest city in the county, appointed by the city fiscal body. The two (2) appointees under this subdivision may not be from the same political party. One (1) appointee must be interested in tourism.

(b) Except as provided in subsection (c), the term of a member appointed to the county food and beverage tax revenue committee under this section is four (4) years.

(c) The initial terms of office for the members appointed to the county food and beverage tax revenue committee under subsection (a) are as follows:

(1) Of the members appointed under subsection (a)(1), one (1) member shall be appointed for a term of two (2) years, one (1) member shall be appointed for three (3) years, and one (1) member shall be appointed for four (4) years.

(2) Of the members appointed under subsection (a)(2), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(3) Of the members appointed under subsection (a)(3), one (1) member shall be appointed for two (2) years and one (1) member shall be appointed for three (3) years.

(4) Of the members appointed under subsection (a)(4), one (1) member shall be appointed for three (3) years and one (1) member shall be appointed for four (4) years.

(d) At the expiration of a term under subsection (c), the member whose term expired shall be reappointed to the county food and beverage tax revenue committee to fill the vacancy caused by the expiration.

(e) The county food and beverage tax revenue committee is abolished on the date that an ordinance to rescind the tax imposed under this chapter takes effect.

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Sec. 25. The general assembly covenants with the county and the purchasers and owners of bonds, leases, obligations, or any other evidences of indebtedness of the county payable from a tax imposed under this chapter that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of a tax imposed under this chapter so long as the principal, interest, or lease rentals due under those bonds, leases, obligations, or other evidences of indebtedness of the county that are payable from a tax imposed under this chapter remain unpaid.

SECTION 7. IC 6-9-36 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 36. Monroe County Food and Beverage Tax

Sec. 1. This chapter applies to Monroe County.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of the county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.

(b) If the fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If the fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance is adopted.

(d) If the fiscal body adopts an ordinance under subsection (a), it may adopt an ordinance to allow every retail merchant to deduct and retain from the amount of those taxes otherwise required to be remitted under this chapter, if timely remitted, a retail merchant's collection allowance. The fiscal body shall state the amount of the allowance in the ordinance. An allowance authorized under this subsection is in addition to any allowance authorized under an ordinance adopted under section 6 or 7 of this chapter.

(e) The fiscal body may not adopt an ordinance under subsection (a) before January 1, 2006.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;**
- (2) in the county in which the tax is imposed; and**

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(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. The county food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from such a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. If an ordinance is not adopted under section 7 of this chapter, the tax that may be imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax under this chapter may be made separately or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. (a) The county fiscal body may adopt an ordinance to require that the tax be reported on forms approved by the county treasurer and that the tax shall be paid monthly to the county treasurer. If such an ordinance is adopted, the tax shall be paid to the county treasurer not more than twenty (20) days after the end

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of the month the tax is collected. If such an ordinance is not adopted, the tax shall be imposed, paid, and collected in exactly the same manner as the state gross retail tax is imposed, paid, and collected pursuant to IC 6-2.5.

(b) If an ordinance is adopted under this section, all of the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration apply to the imposition and administration of the tax imposed under section 3 of this chapter, except to the extent those provisions are in conflict or inconsistent with the specific provisions of this chapter or the requirements of the county treasurer. Specifically and not in limitation of this subsection, the terms "person" and "gross income" shall have the same meaning in this section as set forth in IC 6-2.5, except that "person" shall not include state supported educational institutions. If the tax is paid to the department of state revenue, the returns to be filed for the payment of the tax under this section may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax as the department of state revenue may by rule determine.

Sec. 8. If an ordinance is not adopted under section 9 of this chapter, the amounts received from the county food and beverage tax imposed under this chapter shall be paid monthly by the treasurer of state to the county treasurer upon warrants issued by the auditor of state.

Sec. 9. (a) If an ordinance is adopted under section 3 of this chapter, the county treasurer shall establish a food and beverage tax receipts fund.

(b) The county treasurer shall deposit in the fund county food and beverage tax revenue that the county treasurer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the county fiscal year does not revert to the county general fund.

Sec. 10. (a) If an ordinance is adopted under section 3 of this chapter, the fiscal officer of the city of Bloomington shall establish a food and beverage tax receipts fund.

(b) The fiscal officer shall deposit in the fund county food and beverage tax revenue that the fiscal officer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the city fiscal year does not

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revert to the city general fund.

Sec. 11. (a) Each month, the auditor of Monroe County shall distribute the county food and beverage tax revenue received by the county treasurer between the city of Bloomington and Monroe County in the same ratio that the population of the city of Bloomington bears to the population of Monroe County.

(b) Distribution of county food and beverage tax revenue to the city of Bloomington must be on warrants issued by the auditor of Monroe County.

Sec. 12. Monroe County's share of county food and beverage tax revenue deposited in the county food and beverage tax receipts fund may be used to only finance, construct, operate, and maintain one (1) or more of the following:

- (1)** A convention center, conference center, or auditorium facility.
- (2)** Public safety facilities or operations.
- (3)** Parks and recreation facilities.
- (4)** Tourism or economic development projects.
- (5)** Parking facilities.

Sec. 13. Money deposited in the city food and beverage tax receipts fund may be used only to finance, construct, operate, and maintain one (1) or more of the following:

- (1)** A convention center, conference center, or auditorium facility.
- (2)** Parks and recreation facilities.
- (3)** Tourism or economic development projects.
- (4)** Parking facilities.
- (5)** Public safety facilities or operations.

Sec. 14. (a) There is created a nine (9) member food and beverage tax authority to make recommendations to the county executive and the city executive concerning the use of money in the funds established under sections 9 and 10 of this chapter. The nine (9) members are appointed as follows:

- (1)** Two (2) members appointed by the executive of the largest municipality in the county. Not more than one (1) member appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.
- (2)** Two (2) members appointed by the city council of the largest municipality in the county. Not more than one (1) member appointed under this subdivision may be of the same political party. One (1) member appointed under this

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subdivision must represent the hospitality or restaurant industry.

(3) Three (3) members appointed by the county executive body. Not more than two (2) members appointed under this subdivision may be of the same political party. One (1) member appointed under this subdivision must represent the hospitality or restaurant industry.

(4) Two (2) members appointed by the county fiscal body. One (1) member appointed under this subdivision must be a resident of Ellettsville.

A member appointed under this subsection must reside in Monroe County.

(b) The term of appointment on the authority is two (2) years. However, when the initial appointments are made, each appointing authority shall appoint one (1) member for a one (1) year term and the remaining members for two (2) year terms. Subsequent appointments are for two (2) year terms. A vacancy on the authority shall be filled for the unexpired term by the authority that made the prior appointment.

(c) The affirmative vote of at least five (5) members of the authority is required for the authority to take an action.

Sec. 15. (a) If no obligations are outstanding, the county fiscal body may repeal the ordinance adopted under section 3 of this chapter imposing the tax before December 1 in any year.

(b) An ordinance to rescind the food and beverage tax takes effect January 1 of the year immediately following the year in which the ordinance is adopted.

(c) If the county fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

SECTION 8. [EFFECTIVE UPON PASSAGE] A large percentage of the land in the city of Bloomington and in Monroe County is not taxable because it is owned by the state or the federal government, which puts the city and the county at a disadvantage in their ability to fund projects. These special circumstances require legislation particular to the city and county.

SECTION 9. An emergency is declared for this act."

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1299 as introduced.)

ESPICH, Chair

Committee Vote: yeas 19, nays 4.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1299 be amended to read as follows:

Page 6, line 41, delete "Wayne County Food and Beverage Tax" and insert **"Food and Beverage Taxes in Wayne County"**.

Page 7, between lines 22 and 23, begin a new paragraph and insert:

"Sec. 12. As used in this chapter, "unit" means:

(1) a county described in section 1 of this chapter; or

(2) a city or town located in the county described in section 1 of this chapter."

Page 7, line 23, delete "12." and insert **"13."**

Page 7, line 24, delete "county" and insert **"unit"**.

Page 7, line 25, delete "county's" and insert **"unit's"**.

Page 7, line 26, delete "13" and insert **"14"**.

Page 7, line 26, after "." insert **"The fiscal body of a unit other than a county may not adopt an ordinance under this chapter until after July 31, 2006, unless the fiscal body of the county adopts a resolution to relinquish its exclusive authority to adopt an ordinance under this chapter before August 1, 2006. If a county fiscal body adopts a resolution under this subsection, the county fiscal body shall send a certified copy of the resolution to the executive of each city and town located in the county."**

Page 7, line 31, delete "This subsection does not apply to a county governed under".

Page 7, line 32, delete "IC 36-2-3.5".

Page 7, line 32, after "body" insert **"of a county"**.

Page 7, delete lines 35 through 39.

Page 7, line 40, delete "(e)" and insert **"(d)"**.

Page 7, line 40, delete "(c) or approved" and insert **"(c)"**.

Page 7, line 41, delete "under subsection (d)".

Page 7, after line 42, begin a new paragraph and insert:

"(e) If a unit other than a county adopts an ordinance under this section, the unit's executive shall immediately send a certified copy of the ordinance to the department."

Page 8, line 1, delete "13." and insert **"14."**

Page 8, line 2, delete "12" and insert **"13"**.

Page 8, line 7, delete "county" and insert **"unit"**.

Page 8, between lines 8 and 9, begin a new line blocked left and insert:

"If both a county and another unit located in the county impose a tax under this chapter, the tax imposed by the county does not

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apply within the territory of the other unit imposing the tax."

- Page 8, line 22, delete "14." and insert **"15."**
- Page 8, line 23, delete "13" and insert **"14"**.
- Page 8, line 29, delete "15." and insert **"16."**
- Page 8, line 29, delete "county" and insert **"unit"**.
- Page 8, line 30, delete "14" and insert **"15"**.
- Page 8, line 31, delete "county" and insert **"unit's"**.
- Page 8, line 32, delete "county's" and insert **"unit's"**.
- Page 8, line 36, delete "16." and insert **"17."**
- Page 8, line 37, delete "county" and insert **"unit"**.
- Page 8, line 39, delete "county" and insert **"unit's"**.
- Page 8, line 40, delete "county's" and insert **"unit's"**.
- Page 8, line 41, delete "county's" and insert **"unit's"**.
- Page 9, line 4, delete "17." and insert **"18."**
- Page 9, line 4, delete "county".
- Page 9, line 7, delete "18." and insert **"19."**
- Page 9, line 14, delete "19." and insert **"20."**
- Page 9, line 15, after "county" insert **"containing a unit"**.
- Page 9, line 16, delete "county." and insert **"unit."**
- Page 9, line 20, after "county" insert **"in which the unit"**.
- Page 9, line 20, delete "." and insert **"is located."**
- Page 9, line 21, delete "20." and insert **"21."**
- Page 9, line 21, after "establish" insert **"for each unit in the county that imposes a tax under this chapter"**.
- Page 9, line 25, delete "21." and insert **"22."**
- Page 9, line 26, delete "county" and insert **"unit"**.
- Page 9, line 28, delete "county." and insert **"unit."**
- Page 9, line 29, delete "22." and insert **"23."**
- Page 9, line 29, delete "county" and insert **"unit"**.
- Page 9, line 32, delete "county." and insert **"unit."**
- Page 9, line 34, delete "county." and insert **"unit."**
- Page 9, line 39, delete "county;" and insert **"unit;"**.
- Page 9, line 41, delete "23." and insert **"24."**
- Page 9, line 42, delete "county's" and insert **"unit's"**.
- Page 10, line 2, delete "24." and insert **"25."**
- Page 10, line 2, delete "county".
- Page 10, line 3, delete "to the county".
- Page 10, line 4, delete "fiscal body".
- Page 10, line 4, delete "fund" and insert **"funds"**.
- Page 10, line 5, delete "20" and insert **"21"**.
- Page 10, line 23, delete "county".
- Page 10, line 26, delete "county".

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Page 10, line 42, delete "county".

Page 11, line 3, delete "county".

Page 11, line 4, delete "an ordinance to rescind the tax imposed" and insert **"the county fiscal body adopts a resolution abolishing the food and beverage tax revenue committee. A county fiscal body may adopt a resolution under this subsection if the county fiscal body determines that each unit in the county that had imposed a tax under this chapter has adopted an ordinance to rescind the tax."**

Page 11, delete line 5.

Page 11, line 6, delete "25." and insert **"26."**

Page 11, line 6, delete "the county" and insert **"each unit subject to this chapter"**.

Page 11, line 13, delete "the county" and insert **"a unit"**.

(Reference is to HB 1299 as printed February 25, 2005.)

SAUNDERS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1299 be amended to read as follows:

Page 15, between lines 35 and 36, begin a new paragraph and insert:

"SECTION 1. IC 6-9-37 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 37. County Seat Food and Beverage Tax

Sec. 1. This chapter applies to a city that is the county seat of a county in which is located another city or a town that imposes a food and beverage tax under this article.

Sec. 2. The definitions in IC 6-9-12-1 apply throughout this chapter.

Sec. 3. (a) The fiscal body of a city may adopt an ordinance to impose an excise tax, known as the city food and beverage tax, on transactions described in section 4 of this chapter.

(b) If the fiscal body adopts an ordinance under subsection (a), the fiscal body shall immediately send a certified copy of the ordinance to the department of state revenue.

(c) If the fiscal body adopts an ordinance under subsection (a), the city food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which

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the ordinance was adopted.

Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location or on equipment provided by a retail merchant;
- (2) in the city in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant that ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.

(c) The city food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 5. A city food and beverage tax imposed on a food or beverage transaction described in section 4 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from a transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 6. A tax imposed under this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed with the payment of the tax imposed under this chapter may be made on a separate return or may be combined with the return filed for payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 7. The treasurer of state shall pay monthly the amounts received from the tax imposed under this chapter to the city fiscal officer upon warrants issued by the auditor of state.

Sec. 8. (a) If a tax is imposed under section 3 of this chapter, the city fiscal officer shall establish a food and beverage tax receipts fund.

(b) The city fiscal officer shall deposit in this fund all amounts received under this chapter.

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(c) Money earned from the investment of money in the fund becomes a part of the fund.

Sec. 9. (a) A city shall use money in the fund established under section 8 of this chapter for only the following:

- (1) Renovating the city hall.
- (2) Constructing new police or fire stations, or both.
- (3) Improving the city's sanitary sewers or wastewater treatment facilities, or both.
- (4) Improving the city's storm water drainage systems.
- (5) Other projects involving the city's water system or protecting the city's well fields, as determined by the city fiscal body.

Money in the fund may not be used for the operating costs of a project. In addition, the city may not initiate a project under this chapter after December 31, 2010.

(b) The fiscal body of the city may pledge money in the fund to pay bonds issued, loans obtained, and lease payments or other obligations incurred by or on behalf of the city or a special taxing district in the city to provide the projects described in subsection (a).

(c) Subsection (b) applies only to bonds, loans, lease payments, or obligations that are issued, obtained, or incurred after the date on which the tax is imposed under section 3 of this chapter.

(d) A pledge under subsection (b) is enforceable under IC 5-1-14-4.

Sec. 10. With respect to obligations for which a pledge has been made under section 9(b) of this chapter, the general assembly covenants with the holders of the obligations that this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the tax imposed under this chapter if the payment of any of the obligations is outstanding."

Renumber all SECTIONS consecutively.

(Reference is to HB 1299 as printed February 25, 2005.)

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